

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
IN RE: BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYEE RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION-----x
THIS DOCUMENT RELATES TO:

CONSOLIDATED DERIVATIVE ACTION

-----x
CASTEL, District Judge:

By letter dated today, the parties to the Consolidated Derivative Action have advised the Court that they have now executed a definitive settlement agreement. The parties should file their motion for preliminary approval, annexing the settlement and proposed notice within 14 days of this Order.

Ordinarily, there is about a 90-day interval between an order granting preliminary approval and the hearing on final approval to enable notice to be given and objections received. The parties should be aware that, if the Court grants preliminary approval, it is contemplating conducting the final settlement hearing after the conclusion of the trial of the Consolidated Securities Class Action, which will commence on October 22, 2012. The reasons are several: first, there is a serious issue presented in the pending summary judgment motions in the Consolidated Securities Class Action whether certain types of damages are properly recoverable in the derivative action or in the securities action and deferring the issue will prevent any whipsawing on this issue; second, the issue of available Directors & Officers liability coverage will be clarified, given that both the derivative and securities actions are likely drawing on the same pool of coverage; and third, the Court will have a better understanding of the underlying facts after having presided at the securities trial.

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>6-20-12</u>

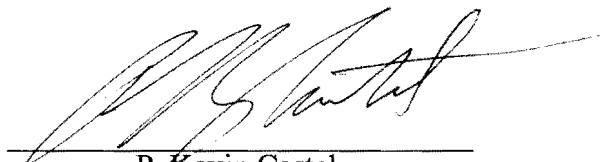
Master File No. 09 MD 2058 (PKC)

ORDER

- 2 -

The parties should address in their submissions the Court's proposal on timing and explain why the settlement proceeds ought not be placed in an interest bearing escrow account pending final approval. If the parties still desire a conference with the Court, they should fax a letter to Chambers.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
June 20, 2012